

CAUSE NO. 14-DCV-217987

EDDIE JAY THATCHER	§	IN THE DISTRICT COURT
v.	§	Fort Bend County - 268th Judicial District Court
	§	____ JUDICIAL DISTRICT
OAKBEND MEDICAL CENTER	§	
	§	FORT BEND COUNTY, TEXAS

**PLAINTIFF'S ORIGINAL PETITION****TO THE HONORABLE JUDGE OF THIS COURT:**

COMES NOW EDDIE JAY THATCHER ("Plaintiff" or "Thatcher") filing his Plaintiff's Original Petition and complaining of OAKBEND MEDICAL CENTER ("Defendant" or "OakBend"), and would respectfully show the Court as follows:

**I. DISCOVERY CONTROL PLAN**

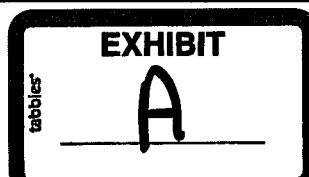
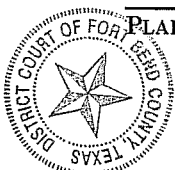
1. Plaintiff intends that discovery be conducted under Level 2 in accordance with Texas Rule of Civil Procedure 190.3.

**II. CLAIMS FOR RELIEF**

2. Pursuant to Texas Rule of Civil Procedure 47, Plaintiff files this Original Petition for retaliation and wrongful termination by Defendant. Plaintiff prefers to have the jury determine the fair amount of compensation for Plaintiff's damages, and Plaintiff places the decision regarding the amount of compensation to be awarded in the jury's hands. Rule 47, however, requires that Plaintiff provide a statement of the amount of monetary relief sought. Accordingly, Plaintiff states that monetary relief over \$100,000 is being sought. The damages sought are within the jurisdictional limits of the court.

**III. PARTIES**

3. Plaintiff EDDIE JAY THATCHER is a citizen of the State of Texas residing in Fort Bend County, Texas.



4. Upon information and belief, Defendant OAKBEND MEDICAL CENTER is a Texas nonprofit corporation organized and existing under the laws of Texas. OakBend maintains its principal place of business in the State of Texas. OakBend may be served with process by serving its registered agent, Joseph Freudenberger, at its registered office address at 1705 Jackson Street, Richmond, Texas 77469 or wherever he may be found.

5. Whenever in this Petition it is alleged the Defendant committed any act or omission, it is meant the Defendant's officers, directors, affiliates, subsidiaries, vice-principals, partners, agents, servants, owners, operators, managers, or employees committed such act or omission and that at the time such act or omission was committed, it was done with the full authorization, ratification or approval of Defendant or was done in the routine normal course and scope of their agency and employment as Defendant's officers, directors, affiliates, subsidiaries, vice-principals, partners, agents, servants, owners, operators, managers, or employees.

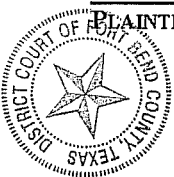
#### **IV. DISCLOSURES**

6. Pursuant to Texas Civil Practice and Remedies Code Section 30.014, the last three numbers of Plaintiff's driver's license number are 727, and the last three numbers of Plaintiff's social security number are 823. Pursuant to Section 30.015, the Plaintiff's current residence address is 6018 Oxford Lake Dr., Rosenberg, Texas 77471.

#### **V. JURISDICTION AND VENUE**

7. This Court has subject matter jurisdiction over this lawsuit because the amount in controversy exceeds this Court's minimum jurisdictional requirements. Defendant is subject to personal jurisdiction in this Court because it is a Texas corporation.

8. Venue is proper in this Court because Fort Bend County is the county "in which all or substantial part of the events or omissions giving rise to [this] claim occurred," and is



the county of Defendant's principal office. Tex. Civ. Prac. & Rem. Code Sec. 15.002(a)(1) and (3).

## **VI. FACTUAL BACKGROUND**

9. Plaintiff Eddie Jay Thatcher was hired by Defendant OakBend Medical Center on or about February 24, 2014.

10. Plaintiff Thatcher was employed as a security officer during his employment with Defendant OakBend.

11. Defendant OakBend is a full service healthcare facility located in Fort Bend County, Texas with two full service hospital campuses and numerous specialty locations.

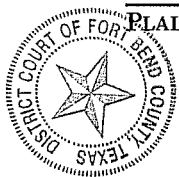
12. On or about April 14, 2014, Defendant OakBend terminated Plaintiff Thatcher's employment.

### **A. PLAINTIFF'S EMPLOYMENT**

13. Plaintiff Thatcher was employed as a security officer by Defendant OakBend Medical Center.

14. In general, Thatcher was responsible for protecting persons and property at OakBend. Among other things, Thatcher was responsible for observing behavioral health patients as assigned; reporting safety hazards observed; providing assistance to employees, patients, and visitors; and providing security intervention and support for situations involving high-risk patients and visitors.

15. On Friday, April 4, 2014, at approximately 9:00 p.m., Plaintiff Thatcher was working his detail when an unconscious patient (identified herein as C.V.) arrived at the OakBend Medical Center's Jackson Street hospital. Thatcher was assigned to watch C.V. Patient C.V. remained unconscious until the end of Thatcher's shift at midnight, and no incidents transpired that required Thatcher's intervention.



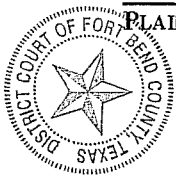
16. When Thatcher arrived at work the following day on Saturday April 5, he was surprised to find C.V. was still unconscious and apparently unattended in a room near the nurse's station. At approximately 3:00 p.m., a technician from Texana Center, a mental health facility, arrived at the OakBend Jackson Street hospital and C.V.'s room to evaluate C.V. The technician attempted to revive C.V. so that she could evaluate him, but C.V. remained unresponsive. The technician explained that she could not evaluate C.V. as long as he was unconscious and that she would have to try again the following day.

17. At that point, a Charge Nurse entered C.V.'s room. The Nurse told the technician that she would "make [C.V.] as uncomfortable as possible" so he would wake up. The Nurse then proceeded to kick the unconscious C.V. in his lower leg. The force of the kick jolted C.V.'s legs, and he immediately woke up complaining of pain. The Nurse then threatened to have C.V. thrown in jail if he did not get up. C.V. became irritated, and he and the Nurse argued. Thatcher tried to defuse the situation, but the Nurse continued to shout at C.V. and provoke him. Thatcher spoke with C.V., who eventually calmed down.

**B. PLAINTIFF'S REPORT**

1. Plaintiff Thatcher, dismayed at the Nurse's actions and concerned that what he observed might be a violation of law, decided it was appropriate to report the incident to his direct supervisor, Harold Allen. Harold Allen is Security Manager at Defendant OakBend and was responsible for the direct supervision of Plaintiff Thatcher during his employment with OakBend.

2. Plaintiff Thatcher reported to Mr. Allen in person at approximately 3:30 p.m. that same day. In response, Allen told Thatcher not to return to C.V.'s bedside. Instead, Allen instructed Thatcher to report to OakBend Williams Way, a separate location. Thatcher followed his orders and immediately reported to the Williams Way facility.



3. After Thatcher arrived at the Williams Way facility, he was surprised to encounter C.V. in the emergency room there. The last time Thatcher had seen C.V., he did not appear to be in stable condition, so Thatcher was surprised C.V. had ended up at the Williams Way facility. Thatcher asked C.V. how he had gotten there, and C.V. related that the Nurse discharged him to Texana Center, who in turn had sent him to OakBend Williams Way because Texana Center felt he was not stable enough to remain at their facility.

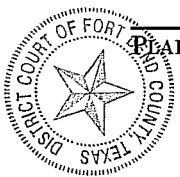
**C. DEFENDANT RETALIATES AND TERMINATES PLAINTIFF'S EMPLOYMENT**

4. Thatcher remained concerned about the manner in which patient C.V. had been treated at OakBend Jackson Street. Accordingly, Thatcher followed up with his supervisor Harold Allen to see how the situation should be handled. In response, Allen told Thatcher not to report back to work and that Allen would call him the following Monday with instructions.

5. Thatcher never heard from Allen; and his calls to Allen went unanswered. Thatcher began to grow concerned that he might have jeopardized his employment by reporting the Nurse. As a result, Thatcher called the Human Resources Department. Nancy Retzlaff is the Director of Human Resources of Defendant OakBend. Thatcher spoke with Retzlaff and explained the situation. Thatcher was told that Human Resources had heard nothing about the C.V. incident, but that it would be taken care of.

6. On or about April 14, 2014, Thatcher met with supervisor Allen. At that meeting, Defendant OakBend terminated Plaintiff Thatcher's employment.

7. Thatcher was provided no reason for his discharge other than a purported failure to deescalate the incident that occurred between the Nurse and patient C.V.



8. In the process of terminating Thatcher, Defendant's actions resulted in damages and injury to Thatcher's professional reputation, personal humiliation, mental anguish, suffering and damaging Thatcher future potential employment opportunities.

## VII. CAUSES OF ACTION

### A. COUNT ONE: RETALIATION UNDER TEXAS HEALTH & SAFETY CODE § 161.134

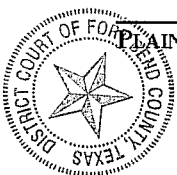
9. Plaintiff adopts and incorporates by reference each preceding paragraph of this Complaint as if fully and completely set forth herein.

10. Pursuant to TEXAS HEALTH & SAFETY CODE § 161.134(f), there is a rebuttable presumption that Defendant OakBend terminated, disciplined, or discriminated against Plaintiff for making a report related to a legal violation because the Plaintiff's termination, discipline, or discrimination occurred before the 60th day after the date on which Plaintiff made his report in good faith.

11. Plaintiff reported legal violations, including patient safety violations, to his supervisor and other administrators of Defendant OakBend. After Plaintiff reported the legal violations, including patient safety violations noted above, Defendant OakBend retaliated against Plaintiff and terminated Plaintiff's employment.

12. Defendant's actions, retaliation, and termination of Plaintiff's employment violated the TEXAS HEALTH AND SAFETY CODE, including but not limited to § 161.134 of the TEXAS HEALTH AND SAFETY CODE.

13. As a direct and proximate result of Defendant's retaliatory conduct, Plaintiff has suffered actual damages, mental anguish, lost wages, lost fringe benefits, lost bonuses, both in the past and in the future, as well as court costs, inconvenience, loss of enjoyment of life in the past and in all probability will continue to suffer in the future.



14. Furthermore, Plaintiff is entitled to recover exemplary damages and reasonable attorney's fees pursuant to TEXAS HEALTH AND SAFETY CODE § 161.134(d)

### **VIII. DAMAGES APPLICABLE TO ALL COUNTS**

15. Plaintiff adopts and incorporates by reference each preceding paragraph of this Petition as if fully and completely set forth herein.

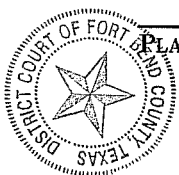
16. Defendant's conduct and actions discussed above proximately caused injury to Plaintiff, which resulted in the following damages:

- a. Actual damages;
- b. Mental anguish in the past;
- c. Mental anguish in the future;
- d. Back pay including lost wages and benefits that would have been paid from the date of the retaliation until the trial date;
- e. Future pay including future bonuses, lost earnings and benefits;
- f. Loss of employment;
- g. Loss of employment benefits;
- h. Prejudgment interest;
- i. Post-judgment interest;
- j. Costs of court; and
- k. Attorney's fees.

17. Plaintiff also seeks unliquidated damages within the jurisdictional limits of this Court.

### **IX. EXEMPLARY DAMAGES**

18. Plaintiff adopts and incorporates by reference each preceding paragraph of this Petition as if fully and completely set forth herein.



19. Plaintiff also seeks exemplary damages caused by the gross negligence and/or malice of Defendant OakBend for damages and losses relating to its actions listed above.

20. Plaintiff's injuries resulted from Defendant's gross negligence or malice which entitles Plaintiff to exemplary damages under TEXAS CIVIL PRACTICE & REMEDIES CODE § 41.003(a) and TEXAS HEALTH AND SAFETY CODE § 161.134(d).

21. The conduct of Defendant's actions or omissions described above, when viewed from the standpoint of Defendant at the time of the act or omission, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to Plaintiff and others. Defendant had actual, subjective awareness of the risk involved in the above described acts or omissions, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Plaintiff and others.

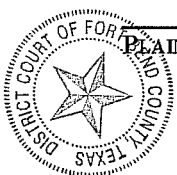
22. Plaintiff intends to show that the factors the jury may consider in determining the amount of exemplary damages which should be awarded include:

- a. the nature of the wrong committed by Defendant;
- b. the character of Defendant's conduct;
- c. the degree of culpability of Defendant;
- d. the situation and sensibilities of the parties concerned; and
- e. the extent to which Defendant's conduct offends a public sense of justice and propriety.

23. Based on the facts stated herein, Plaintiff requests exemplary damages be awarded to Plaintiff from Defendant.

#### **X. ATTORNEY'S FEES**

24. Plaintiff adopts and incorporates by reference each preceding paragraph of this Petition as if fully and completely set forth herein.



25. In addition, as a result of the acts and omissions of Defendant, as specifically set forth herein, it was necessary for Plaintiff to secure counsel to present and prosecute this matter on his behalf.

26. Plaintiff has retained the services of the undersigned counsel of record, and accordingly, Plaintiff sues for reasonable attorney's fees pursuant to TEXAS HEALTH AND SAFETY CODE § 161.134(d).

#### **XI. JURY DEMAND**

27. Plaintiff demands a jury trial and tendered the appropriate fee.

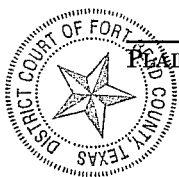
#### **XII. REQUESTS FOR DISCLOSURE**

28. Under Texas Rule of Civil Procedure 194, Plaintiff requests that Defendant disclose, within 50 days of service of this request, the information or materials described in Rule 194.2.

#### **XIII. DEMAND FOR PRESERVATION OF EVIDENCE AND ESI**

29. Plaintiff hereby requests and demands that Defendant OakBend preserve and maintain all evidence pertaining to any claim or defense related to the facts and allegations making the basis of this lawsuit, or damages resulting therefrom.

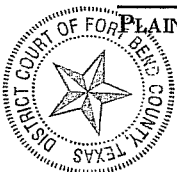
30. Defendant and its affiliated entities should immediately take the necessary steps to issue a litigation hold and preserve all "electronically stored information" ("ESI") and other documents, on whatever storage media, device or location, in their possession or control (including third parties) that contain potential ESI relating to the claims and defenses contained in this Petition, and that Defendant avoid spoliation of this ESI. Defendant should suspend all document retention or destruction policies, including but not limited to video surveillance footage, video security footage, backup, restoration, deletion, destruction, and tape recycling.



### CONCLUSION & PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff EDDIE JAY THATCHER respectfully prays Defendant OAKBEND MEDICAL CENTER be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff and against the Defendant for:

- (1) Actual damages and injuries specifically pled herein;
- (2) Unliquidated damages within the jurisdictional limits of this Court;
- (3) Mental anguish in the past;
- (4) Mental anguish in the future;
- (5) Back pay including lost wages and benefits that would have been paid from the date of the retaliation until the trial date;
- (6) Future pay including future bonuses, lost earnings and benefits;
- (7) Loss of employment;
- (8) Loss of employment benefits;
- (9) Prejudgment interest (from the date of injury through the date of judgment) at the maximum rate allowed by law;
- (10) Post-judgment interest;
- (11) Costs of court;
- (12) Exemplary damages excluding interest;
- (13) Reasonable attorney's fees; and
- (14) Such other and further relief to which the Plaintiff may be entitled at law or in equity.



Respectfully submitted,

THE CLINTON LAW FIRM



Scot Clinton  
Texas Bar No. 24045667  
2700 Post Oak Blvd., Ste. 1120  
Houston, Texas 77056  
(713) 360-8900 Tel.  
(713) 589-8800 Fax.  
Scot@theclintonlawfirm.com

Attorney for Plaintiff  
Eddie Jay Thatcher

I, Annie Rebecca Elliott, District Clerk of Fort Bend County, Texas, do hereby certify that the foregoing is a true, correct and full copy of the instrument herein set out as appears of record in the District Court of Fort Bend County, Texas.  
This 4 day of December, 2014



ANNIE REBECCA ELLIOTT, DISTRICT CLERK

By Ariana C. Salazar

**ARIANA C. SALAZAR**



**Annie Rebecca Elliott**  
**Fort Bend County District Clerk**  
301 Jackson Street  
Richmond, Texas 77469  
Telephone 281-341-4509 Fax 281-341-4519

## CIVIL CASE INFORMATION SHEET

14-DCV-217987

Fort Bend County - 268th Judicial District Court

CAUSE NUMBER (FOR CLERK USE ONLY): COURT (FOR CLERK USE ONLY):

STYLED **Eddie Jay Thatcher v. OakBend Medical Center**

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

<b>1. Contact information for person completing case information sheet:</b> Name: <u>Scot Clinton</u> Email: <u>scot@thecantonlawfirm.com</u> Address: <u>2700 Post Oak Blvd., Suite 1120</u> Telephone: <u>(713) 360-8900</u> City/State/Zip: <u>Houston Texas 77056</u> Fax: <u>(713) 589-8800</u> Signature: <u>Scot Clinton</u> State Bar No: <u>24045667</u>		<b>Names of parties in case:</b> Plaintiff(s)/Petitioner(s): <u>Eddie Jay Thatcher</u> Defendant(s)/Respondent(s): <u>OakBend Medical Center</u> [Attach additional page as necessary to list all parties]	<b>Person or entity completing sheet is:</b> <input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____ Additional Parties in Child Support Case: Custodial Parent: _____ Non-Custodial Parent: _____ Presumed Father: _____	
<b>2. Indicate case type, or identify the most important issue in the case (select only 1):</b>				
<b>Civil</b>		<b>Family Law</b>		
<b>Contract</b> <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: _____ <b>Foreclosure</b> <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract: _____	<b>Injury or Damage</b> <input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation <input type="checkbox"/> Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: _____ <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises <input type="checkbox"/> Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: _____ <input type="checkbox"/> Other Injury or Damage: _____	<b>Real Property</b> <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: _____ <b>Related to Criminal Matters</b> <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other: _____	<b>Marriage Relationship</b> <input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void <b>Divorce</b> <input type="checkbox"/> With Children <input type="checkbox"/> No Children <b>Other Family Law</b> <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other: _____	<b>Post-judgment Actions (non-Title IV-D)</b> <input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other <b>Title IV-D</b> <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocity (UIFSA) <input type="checkbox"/> Support Order <b>Parent-Child Relationship</b> <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Paternity/Parentage <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child: _____
<b>Employment</b> <input type="checkbox"/> Discrimination <input checked="" type="checkbox"/> Retaliation <input checked="" type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment: _____		<b>Other Civil</b> <input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other: _____		

NO. 14-DCV-217987

EDDIE JAY THATCHER,	§	IN THE DISTRICT COURT OF
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Plaintiff,	§	
VS.	§	FORT BEND COUNTY, TEXAS
	§	
OAKBEND MEDICAL CENTER,	§	
	§	
Defendant.	§	268TH JUDICIAL DISTRICT

**DEFENDANT'S ORIGINAL ANSWER**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant OAKBEND MEDICAL CENTER files this, its Original Answer to Plaintiff's Petition, and in support thereof would respectfully show as follows:

**General Denial**

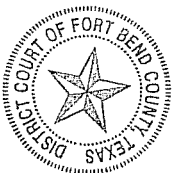
Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendant files a general denial to Plaintiff's Original Petition and demands that Plaintiff prove its case by a preponderance of the evidence.

**Affirmative Defenses**

1. Plaintiff has failed to mitigate his damages.
2. Plaintiff's claim under the Texas Health & Safety Code are barred by sovereign immunity.

**Prayer**

WHEREFORE, Defendant OAKBEND MEDICAL CENTER respectfully requests this Court enter judgment that Plaintiff take nothing by reason of this lawsuit, and that Defendant OAKBEND MEDICAL CENTER, be discharged with its costs and be awarded such other and further relief of whatsoever nature to which it may show itself justly entitled.



Respectfully submitted,

WEYCER, KAPLAN, PULASKI & ZUBER, P.C.

By: /s/Mark J. Levine

MARK J. LEVINE

State Bar No. 00791102

Eleven Greenway Plaza, Suite 1400

Houston, Texas 77046

Telephone: (713) 961-9045

Facsimile: (713) 961-5341

ATTORNEYS FOR DEFENDANT

**CERTIFICATE OF SERVICE**

I hereby certify that on this the 14th day of October, 2014 a true and correct copy of the foregoing Original Answer was forwarded via facsimile and electronically to the following counsel of record:

Scot Clinton  
The Clinton Law Firm  
2700 Post Oak Blvd, Suite 1120  
Houston, Texas 77056  
Tel. 713-360-8900  
Fax 713-589-8800

Scot@theclintonlawfirm.com

/s/Mark J. Levine

MARK J. LEVINE

I, Annie Rebecca Elliott, District Clerk of Fort Bend County, Texas, do hereby certify that the foregoing is a true, correct and full copy of the instrument herein set out as appears of record in the District Court of Fort Bend County, Texas.  
This 14 day of December, 2014.



ANNIE REBECCA ELLIOTT, DISTRICT CLERK

By

Ariana C. Salazar  
ARIANA C. SALAZAR

**CAUSE NO. 14-DCV-217987**

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<b>v.</b>	§	<b>268TH JUDICIAL DISTRICT</b>
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**PLAINTIFF'S FIRST AMENDED PETITION****TO THE HONORABLE JUDGE OF THIS COURT:**

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1. Plaintiff intends that discovery be conducted under Level 2 in accordance with Texas Rule of Civil Procedure 190.3.

**II. CLAIMS FOR RELIEF**

2. Pursuant to Texas Rule of Civil Procedure 47, Plaintiff files this Petition against Defendant for retaliation and wrongful termination, breach of employment contract, and infringement upon constitutionally protected interests in freedom of speech and expression. Plaintiff prefers to have the jury determine the fair amount of compensation for Plaintiff's damages, and Plaintiff places the decision regarding the amount of compensation to be awarded in the jury's hands. Rule 47, however, requires that Plaintiff provide a statement of the amount of monetary relief sought. Accordingly, Plaintiff states that monetary relief over \$100,000 is being sought. The damages sought are within the jurisdictional limits of the

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### III. PARTIES

3. Plaintiff Eddie Jay Thatcher is a citizen of the State of Texas residing in Fort Bend County, Texas.

4. Upon information and belief, Defendant OakBend Medical Center is a Texas nonprofit corporation organized and existing under the laws of Texas. OakBend maintains its principal place of business in the State of Texas. OakBend may be served through its attorney of record, Mark J. Levine, Weycer, Kaplan, Pulaski & Zuber, P.C., at Eleven Greenway Plaza, Suite 1400, Houston, Texas 77046.

5. Whenever in this Petition it is alleged the Defendant committed any act or omission, it is meant the Defendant's officers, directors, affiliates, subsidiaries, vice-principals, partners, agents, servants, owners, operators, managers, or employees committed such act or omission and that at the time such act or omission was committed, it was done with the full authorization, ratification or approval of Defendant or was done in the routine normal course and scope of their agency and employment as Defendant's officers, directors, affiliates, subsidiaries, vice-principals, partners, agents, servants, owners, operators, managers, or employees.

### IV. DISCLOSURES

6. Pursuant to Texas Civil Practice and Remedies Code Section 30.014, the last three numbers of Plaintiff's driver's license number are 727, and the last three numbers of Plaintiff's social security number are 823. Pursuant to Section 30.015, the Plaintiff's current residence address is 6018 Oxford Lake Dr., Rosenberg, Texas 77471.



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7. This Court has subject matter jurisdiction over this lawsuit because the amount in controversy exceeds this Court's minimum jurisdictional requirements. Defendant is subject to personal jurisdiction in this Court because it is a Texas corporation.

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## **VI. FACTUAL BACKGROUND**

9. Plaintiff Eddie Jay Thatcher was hired by Defendant OakBend Medical Center on or about February 24, 2014.

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12. On or about April 14, 2014, Defendant OakBend terminated Plaintiff Thatcher's employment.

### **A. PLAINTIFF'S EMPLOYMENT**

13. In general, Thatcher was responsible for protecting persons and property at OakBend. Among other things, Thatcher's services included observing behavioral health patients as assigned; reporting safety hazards observed; providing assistance to employees, patients, and visitors; and providing security intervention and support for situations involving high-risk patients and visitors.



14. On Friday, April 4, 2014, at approximately 9:00 p.m., Plaintiff Thatcher was working his detail when an unconscious patient (identified herein as C.V.) arrived at the OakBend Medical Center's Main Campus located at 1705 Jackson Street, Richmond, Texas. Thatcher was assigned to watch C.V. Patient C.V. remained unconscious until the end of Thatcher's shift at midnight, and no incidents transpired that required Thatcher's intervention.

15. When Thatcher arrived at work the following day on Saturday April 5, 2014, he was surprised to find C.V. was still unconscious and apparently unattended in a room near the nurse's station. At approximately 3:00 p.m., a technician from Texana Center, a mental health facility, arrived at OakBend's Main Campus and C.V.'s room to evaluate C.V. The technician attempted to revive C.V. so that she could evaluate him, but C.V. remained unresponsive. The technician explained that she could not evaluate C.V. as long as he was unconscious and that she would have to try again the following day.

16. At that point, a Charge Nurse entered C.V.'s room. The Nurse told the technician that she would "make [C.V.] as uncomfortable as possible" so he would wake up. The Nurse then proceeded to kick the unconscious C.V. in his lower leg. The force of the kick jolted C.V.'s legs, and he immediately woke up complaining of pain. The Nurse then threatened to have C.V. thrown in jail if he did not get up. C.V. became irritated, and he and the Nurse argued. Thatcher tried to defuse the situation, but the Nurse continued to shout at C.V. and provoke him. Thatcher spoke with C.V., who eventually calmed down.

**B. PLAINTIFF'S REPORT**

17. Plaintiff Thatcher, dismayed at the Nurse's actions and concerned that what he observed might be a violation of law, decided it was appropriate to report the incident to his direct supervisor, Harold Allen. Harold Allen is Security Manager at Defendant OakBend and



was responsible for the direct supervision of Plaintiff Thatcher during his employment with OakBend.

18. Plaintiff Thatcher reported to Mr. Allen in person at approximately 3:30 p.m. that same day. In response, Allen told Thatcher not to return to C.V.'s bedside. Instead, Allen instructed Thatcher to report to OakBend Williams Way, a separate location. Thatcher followed his orders and immediately reported to the Williams Way facility.

19. After Thatcher arrived at the Williams Way facility, he was surprised to encounter C.V. in the emergency room there. The last time Thatcher had seen C.V., he did not appear to be in stable condition, so Thatcher was surprised C.V. had ended up at the Williams Way facility. Thatcher asked C.V. how he had gotten there, and C.V. related that the Nurse discharged him to Texana Center, who in turn had sent him to OakBend Williams Way because Texana Center felt he was not stable enough to remain at their facility.

**C. DEFENDANT RETALIATES AND TERMINATES PLAINTIFF'S EMPLOYMENT**

20. Thatcher remained concerned about the manner in which patient C.V. had been treated at OakBend's Main Campus. Accordingly, Thatcher followed up with his supervisor Harold Allen to see how the situation should be handled. In response, Allen told Thatcher not to report back to work and that Allen would call him the following Monday with instructions.

21. Thatcher never heard from Allen; and his calls to Allen went unanswered. Thatcher began to grow concerned that he might have jeopardized his employment by reporting the Nurse. As a result, Thatcher called the Human Resources Department. Nancy Retzlaff is the Director of Human Resources of Defendant OakBend. Thatcher spoke with Retzlaff and explained the situation. Thatcher was told that Human Resources had heard nothing about the C.V. incident, but that it would be taken care of.



22. On or about April 14, 2014, Thatcher met with supervisor Allen. At that meeting, Defendant OakBend terminated Plaintiff Thatcher's employment.

23. Thatcher was provided no reason for his discharge other than a purported failure to deescalate the incident that occurred between the Nurse and patient C.V.

24. In the process of terminating Thatcher, Defendant's actions resulted in damages and injury to Thatcher's professional reputation, personal humiliation, mental anguish, suffering and damaging Thatcher future potential employment opportunities.

## **VII. CAUSES OF ACTION**

### **A. Count One: Retaliation Under Texas Health & Safety Code § 161.134**

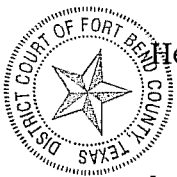
25. Plaintiff Eddie Jay Thatcher adopts and incorporates by reference each preceding paragraph of this Petition as if fully and completely set forth herein.

26. Plaintiff reported legal violations, including patient safety violations, to his supervisor and other administrators of Defendant OakBend. After Plaintiff reported the legal violations, including patient safety violations noted above, Defendant retaliated against Plaintiff and terminated Plaintiff's employment.

27. Because Defendant terminated Plaintiff's employment before the 60th day after the date on which Plaintiff made his report in good faith to OakBend, there is a rebuttable presumption that Defendant terminated Plaintiff for making a report related to a legal violation pursuant to Texas Health and Safety Code § 161.134(f).

28. Defendant's actions, retaliation, and termination of Plaintiff's employment violated the Texas Health and Safety Code, including but not limited to § 161.134 of the Texas Health and Safety Code.

29. As a direct and proximate result of Defendant's retaliatory conduct, Plaintiff has suffered actual damages, mental anguish, lost wages, lost fringe benefits, lost bonuses,



both in the past and in the future, as well as court costs, inconvenience, loss of enjoyment of life in the past and in all probability will continue to suffer in the future.

30. Furthermore, Plaintiff is entitled to recover exemplary damages and reasonable attorney's fees pursuant to Texas Health and Safety Code § 161.134(d).

**B. COUNT TWO: BREACH OF EMPLOYMENT CONTRACT**

31. Plaintiff Eddie Jay Thatcher adopts and incorporates by reference each preceding paragraph of this Petition as if fully and completely set forth herein. Plaintiff provided services to Defendant in the form of general work in the protection of persons and property, and the enforcement of all applicable policies, rules, and regulations at Defendant OakBend Medical Center. Plaintiff also was responsible for observing behavioral health patients as assigned, reporting safety hazards observed; providing assistance to employees, patients, and visitors; and providing security intervention and support for situations involving high-risk patients and visitors, and complying with and enforcing applicable federal, state, and local laws to prevent losses due to accidents and incidents.

32. Plaintiff reported legal violations, including patient safety violations, to his supervisor and other administrators of Defendant OakBend. After Plaintiff reported the legal violations, including patient safety violations noted above, Defendant OakBend terminated Plaintiff's employment.

33. Defendant's actions, retaliation, and termination of Plaintiff's employment violated the terms of his employment and consequently the Texas Local Government Code, including but not limited to § 271.152 of the Texas Local Government Code.

34. As a direct and proximate result of Defendant's conduct, Plaintiff has suffered actual damages, mental anguish, lost wages, lost fringe benefits, lost bonuses, both in the past



and in the future, as well as court costs, inconvenience, loss of enjoyment of life in the past and in all probability will continue to suffer in the future.

**C. COUNT THREE: RETALIATION FOR EXERCISE OF FREE SPEECH AND EXPRESSION**

35. Plaintiff Eddie Jay Thatcher adopts and incorporates by reference each preceding paragraph of this Petition as if fully and completely set forth herein.

36. Plaintiff reported legal violations, including patient safety violations, to Defendant OakBend. The Plaintiff's report constitutes speech by an individual citizen having to do with a matter of public concern. After Plaintiff reported the legal violations, including patient safety violations noted above, Defendant OakBend retaliated against Plaintiff and terminated Plaintiff's employment.

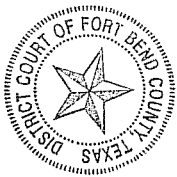
37. Defendant's actions, retaliation, and termination of Plaintiff's employment infringes upon Plaintiff's constitutionally protected interest in freedom of speech and expression, under Tex. Const. art. I, § 8 and the First Amendment of the United States Constitution.

**VIII. DAMAGES**

38. Plaintiff adopts and incorporates by reference each preceding paragraph of this Petition as if fully and completely set forth herein.

39. Defendant's conduct and actions discussed above proximately caused injury to Plaintiff, which resulted in the following damages:

- a. Actual damages;
- b. Mental anguish in the past;
- c. Mental anguish in the future;
- d. Back pay including lost wages and benefits that would have been paid from the date of the retaliation until the trial date;



- e. Future pay including future bonuses, lost earnings and benefits;
- f. Loss of employment;
- g. Loss of employment benefits;
- h. Prejudgment interest;
- i. Post-judgment interest;
- j. Costs of court; and
- k. Attorney's fees.

40. Plaintiff also seeks unliquidated damages within the jurisdictional limits of this Court.

#### **IX. EXEMPLARY DAMAGES**

41. Plaintiff Eddie Jay Thatcher adopts and incorporates by reference each preceding paragraph of this Petition as if fully and completely set forth herein.

42. Plaintiff also seeks exemplary damages caused by the gross negligence and/or malice of Defendant OakBend for damages and losses relating to its actions listed above.

43. Plaintiff's injuries resulted from Defendant's gross negligence or malice which entitles Plaintiff to exemplary damages under Texas Civil Practice and Remedies Code § 41.003(a) and Texas Health and Safety Code § 161.134(d).

44. The conduct of Defendant's actions or omissions described above, when viewed from the standpoint of Defendant at the time of the act or omission, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to Plaintiff and others. Defendant had actual, subjective awareness of the risk involved in the above described acts or omissions, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Plaintiff and others.



45. Plaintiff intends to show that the factors the jury may consider in determining the amount of exemplary damages which should be awarded include:

- a. the nature of the wrong committed by Defendant;
- b. the character of Defendant's conduct;
- c. the degree of culpability of Defendant;
- d. the situation and sensibilities of the parties concerned; and
- e. the extent to which Defendant's conduct offends a public sense of justice and propriety.

46. Based on the facts stated herein, Plaintiff requests exemplary damages be awarded to Plaintiff from Defendant.

#### **X. ATTORNEY'S FEES**

47. Plaintiff adopts and incorporates by reference each preceding paragraph of this Petition as if fully and completely set forth herein.

48. In addition, as a result of the acts and omissions of Defendant, as specifically set forth herein, it was necessary for Plaintiff to secure counsel to present and prosecute this matter on his behalf.

49. Plaintiff has retained the services of the undersigned counsel of record, and accordingly, Plaintiff sues for reasonable attorney's fees pursuant to Texas Health and Safety Code § 161.134(d).

#### **XI. JURY DEMAND**

50. Plaintiff demands a jury trial and tendered the appropriate fee.

#### **XII. REQUESTS FOR DISCLOSURE**

51. Under Texas Rule of Civil Procedure 194, Plaintiff previously requested that Defendant disclose, within 50 days of service of this request, the information or materials described in Rule 194.2.



### **XIII. DEMAND FOR PRESERVATION OF EVIDENCE AND ESI**

52. Plaintiff previously requested and demanded that Defendant OakBend preserve and maintain all evidence pertaining to any claim or defense related to the facts and allegations making the basis of this lawsuit, or damages resulting therefrom.

53. Defendant and its affiliated entities should immediately take the necessary steps to issue a litigation hold and preserve all “electronically stored information” (“ESI”) and other documents, on whatever storage media, device or location, in their possession or control (including third parties) that contain potential ESI relating to the claims and defenses contained in this Petition, and that Defendant avoid spoliation of this ESI. Defendant should suspend all document retention or destruction policies, including but not limited to video surveillance footage, video security footage, backup, restoration, deletion, destruction, and tape recycling.

### **IX. CONCLUSION & PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff Eddie Jay Thatcher respectfully prays Defendant OakBend Medical Center be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff and against the Defendant for:


- (1) Actual damages and injuries specifically pled herein;
- (2) Unliquidated damages within the jurisdictional limits of this Court;
- (3) Mental anguish in the past;
- (4) Mental anguish in the future;
- (5) Back pay including lost wages and benefits that would have been paid from the date of the retaliation until the trial date;
- (6) Future pay including future bonuses, lost earnings and benefits;



- (7) Loss of employment;
- (8) Loss of employment benefits;
- (9) Prejudgment interest (from the date of injury through the date of judgment) at the maximum rate allowed by law;
- (10) Post-judgment interest;
- (11) Costs of court;
- (12) Exemplary damages excluding interest;
- (13) Reasonable attorney's fees; and
- (14) Such other and further relief to which the Plaintiff may be entitled at law or in equity.

Respectfully submitted,

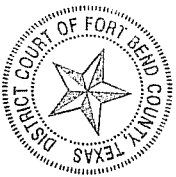
THE CLINTON LAW FIRM



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Scot@theclintonlawfirm.com


Attorney for Plaintiff  
Eddie Jay Thatcher



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this instrument is being served on all parties on this December 3, 2014.

Mark J. Levine  
Weycer, Kaplan, Pulaski & Zuber, P.C.  
11 Greenway Plaza, Suite 1400  
Houston, Texas 77046-1104  
(713) 961-5341 fax  
mlevine@wkpz.com  
Attorney for Defendant



Scot Clinton

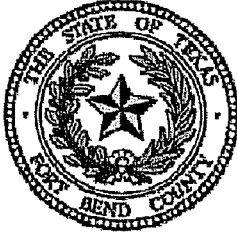
I, Annie Rebecca Elliott, District Clerk of Fort Bend County, Texas, do hereby certify that the foregoing is a true, correct and full copy of the instrument herein set out as appears of record in the District Court of Fort Bend County, Texas.  
This 4 day of December 2014



ANNIE REBECCA ELLIOTT, DISTRICT CLERK

By Ariana C. Salazar

ARIANA C. SALAZAR



**ANNIE REBECCA ELLIOTT**  
District Clerk  
301 Jackson St. Richmond, TX 77469  
Fort Bend County, Texas

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STYLE: Eddie Jay Thatcher vs OakBend Medical Center

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| <input type="checkbox"/> JUDGMENT and SENTENCE    |  | <input type="checkbox"/> JUDGMENT REVOKING PROBATION/ADJUDICATING GUILT |  |
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foregoing is a true, correct and full copy of the  
instrument herein set out as appears of record in  
the District Court of Fort Bend County, Texas.  
This 9 day of December 2014



ANNIE REBECCA ELLIOTT, DISTRICT CLERK

By Ariana C. Salazar

ARIANA C. SALAZAR